

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5949 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHIKHABHAI SHITALBHAI KAHAR

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR. N.D. GOHIL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 19/01/98

ORAL JUDGEMENT

By way of this Special Civil Application, the petitioner has challenged the order of detention dated 5.8.1997 passed by the Commissioner of Police, Baroda City. It is now well settled that merely because the detenu is a bootlegger, he cannot be preventively detained under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to

`as the Act of 1985'), unless there is material to show that his activities as a bootlegger has affected adversely or likely to affect adversely the maintenance of public order. Reference may be made to a decision of the apex court in the case of PIYUSH KANTILAL MEHTA VS. COMMISSIONER OF POLICE, AHMEDABAD reported in AIR 1989 SC 491.

2. No reply to the petition has been filed. However, this Special Civil Application is opposed by the learned A.P.P.

3. I have perused the material on record with the assistance of the learned Advocate for the petitioner and the learned A.P.P. Some cases have been registered against the petitioner for offences under the Bombay Prohibition Act, 1948. I have also read the statements of certain witnesses as referred in the grounds of detention. Statements of the witnesses are of general nature and stereotype. The material available on record does not suggest that the activities of the petitioner as bootlegger has been in any way affected adversely or likely to affect adversely the maintenance of public order. Thus, in my view the order of detention is illegal and is not sustainable.

4. In view of the aforesaid, this Special Civil Application is allowed. The impugned order of detention dated 5.8.1997 passed by the Police Commissioner, Baroda City is quashed and set aside. The detenu shall be released forthwith if not required in any other case. Rule is made absolute accordingly.

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